

The complaint

Mr B and Ms C complain about DAS Legal Expenses Insurance Company Limited's (DAS) poor handling of their claim, under their home emergency policy.

What happened

Mr B and Ms C had a leak at their tenanted property. They called DAS to make a claim. It sent an engineer within a few hours of the report. But by the time he arrived, he noted that the leak had stopped. He was told and documented, that Mr B and Ms C repaired the leak themselves, although, the water had caused damage inside the property. The engineer said that he then checked over the area and found no further leaks.

A few days after the engineer's visit, Mr B and Ms C contacted DAS again, but this time raised a complaint. They said that the engineer who DAS sent, had caused further damage, and hadn't restored the water to the property. They said that they had to instruct an independent engineer to attend, and he found further issues. The attendance of this engineer cost Mr B and Ms C £220.

DAS arranged for another engineer to attend, but this appointment was cancelled by Mr B and Ms C, as they had instructed another engineer to carry out the repairs, which cost them £618.00.

Mr B and Ms C believed that it was the DAS engineer's actions, that led to the further damage and requested that it reimburse all the costs they had incurred (a total of £838.00). They also complained about the poor service and in particular that the DAS engineer failed to attend within the contractual timeframe. And they asked for £1,000 compensation, for the trouble and upset caused.

In its final response, DAS partially upheld their complaint. They accepted that there had been poor service issues, in particular its engineer not attending on time, and it apologised. It didn't accept that it was responsible for any further damage caused at Mr B and Ms C's property. And said that there was no evidence that its engineer had isolated the valve. However, it offered a goodwill gesture of £408, as a contribution towards the cost of parts and some of the labour costs, that Mr B and Ms C incurred.

As Mr B and Ms C were given their referral rights and remained unhappy, they referred a complaint to our service. One of our investigators considered the complaint and thought it should be upheld. She said that DAS ought to reimburse Mr B and Ms C's costs that they incurred namely £838.00. She said although there wasn't evidence that DAS' engineer hadn't switched off the valve, he should have noted that it wasn't working correctly and rectified this, so that further damage could be prevented. She also said that DAS should pay compensation of £100 for the poor service. She felt that the £1,000 requested by Mr B and Ms C, wasn't reasonable.

Mr B and Ms C accepted the view, DAS did not. It said that the evidence showed that the valve had been switched off before its engineer had attended. And that this had been noted

in the report that Mr B and Ms C provided from their engineer. So, it asked for a decision from an ombudsman.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I considered the complaint, and I thought the complaint should be upheld. I issued a provisional decision on 26 September 2023 and asked both parties to send me anything else by 24 October 2023. In my provisional decision I said:

Having done so, I'm minded to partially uphold this complaint. I understand that this is likely to be a disappointment to Mr B and Ms C, but I hope my provisional findings explain why I think this is fair.

Mr B and Ms C had a leak at their tenanted property. As they held a home emergency cover with DAS, they made a claim. It accepted the claim and instructed its engineer to attend. Mr B explained that while they were waiting for the engineer to attend, he carried out the repair and fixed the leak.

Mr B and Ms C said the reason they carried out the repair, was due to the delay in the engineer attending. And as the leak was under high pressure, in the loft area and had caused substantial damage, they said it was critical to get it under control. Mr B and Ms C said that they had stopped the leak, by the time the DAS engineer turned up.

DAS said that when its engineer attended, he found the following: 'Upon arrival the PH mentioned they had a water leak in the loft which caused the ceiling to fall down just plasterboard ceiling which has all been ripped down by PH the leak has also already been fixed by the PH as they couldn't wait the leak was coming from the cold outlet feed from tank on isolation valve water has been switched on, I have checked all the valve and all working perfectly fine no further leaks.'

DAS believed that during the repair of the leak the water would've been turned off. This it said would have initially been done when the fibre washer was replaced to the cold-water inlet. DAS also highlighted that Mr B and Ms C's own contractor's report, supported this: 'Tenants explained that their landlord had previously changed over the existing fibre washer on their existing inlet isolation valve on their existing cold water storage cistern'.

DAS further explained that if the cold-water inlet valve was turned off, it may have taken some time to empty the tank, therefore the outlets would run for a while before drying up. But its engineer confirmed that the valve was opened for testing purposes and to ensure there were no additional leaks or potential damages. And since the valve didn't show any leaks and the ballcock functioned properly during testing, there was no reason for him to close the valve again. Also, no further plumbing related issues were brought to its engineer's attention, at the time of the visit.

I'm currently persuaded that there isn't enough evidence to support that the DAS engineer turned off the water or isolated the cold-water valve. Prior to his arrival, Mr B and Ms C confirmed that they had repaired the leak. I understand their urgency to do this, given the damage that happened. But the DAS engineer indicated that the valve was opened for testing purposes to ensure that there were no further leaks. And as no further leaks (or

issues with the valve) were found, I can see no reason why the valve would be closed. Consequently, I'm not persuaded that DAS engineer closed the valve.

I've next considered Mr B and Ms C's costs that they incurred namely £868.00 for the contractors who attended. They said that the first engineer who attended invoiced them £220.00 for all the work he carried out, which included a report. The second contractor replaced the faulty pump.

DAS declined to reimburse the first engineer's costs on the basis of the policy exclusions, which indicate that it wouldn't be responsible for any costs it hasn't agreed to, before a claim is accepted.

DAS explained that the claim that had been accepted, it did send an engineer, and he found there was no leak (after it had been repaired by Mr B and Ms C). Mr B and Ms C then contacted DAS again, after their first engineer had visited and found that the valve had been isolated. I can't see that any prior authority for DAS to cover any costs incurred, had been obtained by either Mr B or Ms C. So, I'm satisfied that DAS had been fair to decline this cost.

As to the second engineer costs which totalled £618.00, DAS has agreed, as a goodwill gesture to reimburse £408.00. It explained that this payment covered the parts and some of the labour charged. It felt that the total amount of labour invoiced by Mr B and Ms C's contractor was excessive, and it considered this when determining a fair contribution towards the total cost. Further, as Mr B and Ms C, cancelled its engineer before it had the opportunity to deal with the matter, DAS relied again on the policy exclusion as a reason why it didn't agree to reimburse the full cost.

I haven't been provided with enough evidence from Mr B and Ms C as to why their engineer took the amount of time, he did to replace the pump. But, even if there was enough evidence, I'm satisfied that they didn't obtain prior permission from DAS to cover any costs before the work was carried out. Consequently, I can't see where they abided by the policy. And I'm currently persuaded that DAS was fair to pay a contribution of £408.00, towards the second engineer's costs. If this amount has yet to be paid, I think Mr B and Ms C ought to approach to DAS to obtain it, if they still require it.

DAS has acknowledged and apologised for the poor standard of service it provided. There was a delay in its engineer's attendance, it held and text the incorrect phone number, which meant that Mr B and Ms C didn't receive the appropriate notifications. To recognise the poor service and the inconvenience caused, DAS should pay compensation of £100. Which I think is fair and in line with our guidelines on compensation awards.

Taking all of the evidence into consideration, I don't think that at present, DAS was unfair or unreasonable not to reimburse the full costs incurred for the reasons I have given. I think it's fair that DAS pay compensation of £100, for the trouble and upset caused. If Mr B and Ms C have any further new evidence to the contrary, then of course I will consider it.

Responses to my provisional decision

DAS said that it had nothing further to add to the provisional decision. It did, however, provide further comments on the report from Mr B and Ms C's engineer who replaced the pump, as to the time he had taken and why it was unable to cover the full labour costs. It said:

'It appears from reading the report, the invoice was higher due to extensive trace & access, this would not be covered under the home emergency policy. We do not have any evidence

to confirm that minor trace & access was carried out, therefore, we would not cover the full costs of labour.'

Mr B and Ms C made several comments. And for ease, I've summarised them as follows:

- They said that there appeared to be confusion as to the order in which the trades attended.
- Their contractor confirmed that the pump was broken, and the lack of water reported by their tenants was due to the tank valve being in the shut position.
- They said that our investigator said that there was no evidence to suggest that the DAS engineer turned off the valve, but he ought to have noted that it wasn't working correctly and rectified this. Which Mr B and Ms C agreed with.
- They said that the provisional decision contradicted our investigator's view, as it said that there was evidence to show that the valve had been isolated. But the DAS engineer confirmed that the valve was opened for testing purposes and as it didn't show any leaks and the ballcock was functioning correctly, there was no reason for him to close it again.
- Mr B and Ms C said that their engineer who had attended found the valve shut and as there had been no one who had been to the pump after the DAS engineer, this meant that it must have been the DAS engineer, who caused the damage.
- They felt that as it was DAS' engineer who caused the damage, it should pay for it.
- They also felt that their engineer who changed the pump costs were reasonable.
- They concluded that: *'the DAS engineer turned up and regardless of what valves were off or on, or the state of the system, after he finished and left, the system was already broken, and he should be accountable for any negligence committed.'*

I have carefully considered the comments made by both parties and those especially from Mr B and Ms C. I don't find that their comments have changed my provisional decision. And I'll explain why.

I accept the order of the trades who attended, and this was the order indicated in the provisional decision. Moreover, in the provisional decision, I also included the actions of Mr B, as these were relevant to the overall event. In that, the evidence indicated that he carried out a repair to stop the leak, prior to the arrival of the DAS engineer. And prior to the arrival of their first engineer who attended after the DAS engineer.

Out of all of the comments made by Mr B and Ms C, I note that neither mention the actions of Mr B in repairing the leak. So, rather than only the DAS engineer who assessed the pump, Mr B also inspected and repaired the leak.

As Mr B had carried out the repair, the evidence shows that the DAS engineer then attended. From his report, it said:

'Upon arrival the PH mentioned they had a water leak in the loft which caused the ceiling to fall down just plasterboard ceiling which has all been ripped down by PH the leak has also already been fixed by the PH as they couldn't wait the leak was coming from the cold outlet feed from tank on isolation valve water has been switched on, I have checked all the valve and all working perfectly fine no further leaks.'

DAS believed that during the repair of the leak the water would've been turned off. This it said would have initially been done when the fibre washer was replaced to the cold-water inlet. DAS also highlighted that Mr B and Ms C's own contractor's report, supported this:

'Tenants explained that their landlord had previously changed over the existing fibre washer on their existing inlet isolation valve on their existing cold water storage cistern'.

DAS further explained that if the cold-water inlet valve was turned off, it may have taken some time to empty the tank, therefore the outlets would run for a while before drying up. It seems from the further comments made by Mr B and Ms C, they have ignored this vital piece of evidence. That is, that the tank would have had water in it and that water would have taken time before it emptied. Therefore the outlets would have run for a while before drying up.

Consequently, I think the reason the water was available after the DAS engineer left was because the tank still had water in it. And I'm persuaded that as the water had been isolated following the leak and before the DAS engineer attended, then the water (as it was being used in the home) eventually ran dry before Mr B and Ms C's engineer attended.

Accordingly, I can't be satisfied that it was the DAS engineer who isolated the water, as the evidence points to Mr B who I think must have isolated the water in order to stop the leak.

I've next considered whether DAS was reasonable not to pay the full labour costs of Mr B and Ms C's engineer who carried out the repair to the pump.

Mr B and Ms C believed that DAS' engineer caused damage to the pump and because of this DAS ought to reimburse them their full costs they incurred.

DAS said that extensive trace and access was conducted before the repair was carried out. Having reviewed the report from Mr B and Ms C's engineer which said: *'Access had to be made to the pump to carry out the work adding additional time to then also put back the panelling behind which the pump sat.'*

I'm satisfied that there was trace and access conducted. I can see that the policy doesn't provide cover for trace and access. So, I don't agree that DAS was unreasonable not to have offered to pay the total labour costs.

In addition, the policy terms and conditions state that prior permission must be obtained from DAS, where a policyholder wishes to use their own contractor. I haven't been provided with any evidence from Mr B or Ms C, that they sought and obtained prior permission from DAS to instruct their own contractor. So, I don't think DAS was unfair not to agree to reimburse the invoice in full.

Finally, DAS in its acceptance of my provisional decision, has accepted that it ought to pay Mr B and Ms C £100 compensation for the poor service they experienced, namely, the delay and poor communication issues. I think this is a fair amount as it adequately reflects the impact of the poor service on Mr B and Ms C. And is in line with our guidance on compensation.

Taking all of the circumstances into consideration, I don't think DAS acted unfairly when it declined to reimburse Mr B and Ms C's costs in full. I think it was fair to offer a contribution towards the parts and some labour costs. And I think it is reasonable for it to pay Mr B and Ms C £100 compensation for the poor service they experienced.

Putting things right

So, to put matters right, I direct DAS, as indicated below.

My final decision

For the reasons given, I partially uphold this complaint.

To put matters right, DAS Legal Expenses Insurance Company Limited to:

Pay Mr B and Ms C £100 compensation for the trouble and upset caused.

To pay Mr B and Ms C £408 as a contribution towards their costs, unless it has already settled this amount.

DAS Legal Expenses Insurance Company Limited must pay the above within 28 days of the date on which we tell it Mr B and Ms C accept my final decision. If it pays later than this, it must also pay interest on the amount from the date of my final decision to the date of payment at 8% a year simple.

If DAS Legal Expenses Insurance Company Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B and Ms C how much it's taken off. It should also give Mr B and Ms C a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Ms C to accept or reject my decision before 20 November 2023.

Ayisha Savage
Ombudsman